IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1445 of 2001

in

SPECIAL CIVIL APPLICATION No 1321 of 2001

with

CIVIL APPLICATION No 10673 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BORISAGAR JAGDISH ARJUNLAL
Versus
STATE OF GUJARAT AND ORS.

Appearance:
1. LETTERS PATENT APPEAL No. 1445 of 2001
MS. DISHA NANAVATI, FOR NANAVATY ADVOCATES,
for the Appellant
MS. HARSHA DEVANI, ASSISTANT GOVERNMENT PLEADER,
for Respondent Nos. 1-3
MR RA MISHRA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 19/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

1. In this Letters Patent Appeal, the petitioner has assailed the judgment of learned Single Judge rendered on 10-04-2001 in writ petition, being Special Civil Application No. 1321 of 2001, whereby the petition came to be dismissed.

2. We have heard Ms.Disha Nanavati, learned Advocate for the petitioner; Ms.Harsha Devani, learned Assistant Government Pleader for respondent Nos. 1,2 and 3; and, Mr.R.A Mishra, learned Advocate for respondent No.4. We have, also, examined the factual profile of the case. Our attention is, also, invited to the decision of the Full Bench, rendered on 03-12-2003 in Special Civil Application No. 8075 of 2001 and others, in which, one of us (J.N.Bhatt, J.) was a party and the subsequent Resolution No.PRE-1096-3050-K dated 12-02-2004 issued by the Department of Education, Government of Gujarat.

4. The learned Single Judge, while dismissing the petition of the appellant - original petitioner - held that, though he was placed at Sr. No.25 in the Waiting List, he is not eligible for the post of Vidhya Sahayak under the District Primary Education Officer, Junagadh, on the premise that a teacher with the qualification of B.Ed. cannot be considered to be a teacher with the qualification of P.T.C., whereas, the petitioner had the qualification of C.P.Ed. i.e. Certificate of Physical Education and not P.T.C. However, our attention is drawn that the appellant original petitioner - before us, has been holding D.P.Ed. i.e. Diploma in Physical Education in place of C.P.Ed. i.e. Certificate in Physical Education. The learned Single Judge, also, further held that the petitioner's name was merely included in the Waiting List and that the petitioner had not been appointed to the post and, therefore, he had no indefeasible right to be appointed to the post of Assistant Teacher in a Primary School. On this premise,

the claim of the applicant original petitioner - for appointment to the post of Assistant Teacher or Vidhya Sahayak or not, was not upheld.

5. Upon consensus, in view of the subsequent developments and the Full Bench judgment, as aforesaid, and resultant aforesaid Resolution dated 12-02-2004 of the Government, it is stated at the Bar that the question of eligibility and entitlement to the said post, will have to be, now, considered and governed in the light of the observations and the directions made in the Full Bench judgment as well as the resultant aforesaid Government Resolution and not on the ground stated in the impugned judgment qua the qualification for the said post.

6. As far as the dismissal of the petition is concerned, it is, also, based on the ground that the person having been empanelled in the Waiting List, cannot, as of right claim for being appointed for the post for which the Waiting List is prepared. Also, the law is very well settled on this view and needs no further elaboration.

7. In the result, while dismissing this Letters Patent Appeal against the impugned judgment, we find that the eligibility and the entitlement, insofar as the educational qualification is concerned, will have to be considered and examined in the light of the aforesaid Full Bench judgment and subsequent Resolution of the Government, as jointly submitted before us, and with this observation, we dismiss the Letters Patent Appeal without any orders as to costs. This being so, there will be no orders in Civil Application.

(J. N. BHATT, J.)

(D. N. PATEL, J.)

/shamnath